REMARKS

Claims 1, 4-9, 12-17, 20 an 21 are pending in this application. Claims 2, 3, 10, 11, 18 and 19 have been canceled without prejudice or disclaimer. Claims 1 and 9 have been amended to incorporate the features of claims 2 and 3 or 10 and 11 respectively. Claims 4-8 and 12-16 have been amended to delete reference to canceled claims. New claims 20 and 21 have been added to address an embodiment of the claimed invention described, for example, in Example 1, page 29 of the specification. Accordingly, no new matter has been introduced by these amendments.

Claims 1-3, 5, 9-11, 13, 18 and 19 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Higuchi et al. (U.S. Patent No. 5,824,430). The Examiner has provided a very detailed application of the teachings of Higuchi et al. to the claims as rejected in the final action. Although the presently amended claims 1 and 9 combine features from the rejected claims, they also require that "the intermediate layer is a polyethylene single layer film." It is respectfully submitted that the claims as amended are more clearly distinguished from the teachings of Higuchi et al. for the reasons previously presented, in addition to the following.

It is recognized that Higuchi et al. teaches that the laminate structure of the separator for a battery can be a two or three layer structure, as illustrated in Figure 1 and described at col. 5, line 56 to col. 6, line 10. It should be noted, however, that either the polypropylene layer is the intermediate layer (Fig. 1(b)) or the layer that can be either polyethylene, polybutene or a blend of polypropylene and high density polyethylene (see col. 4, line 58 to col. 5, line 6) can be the intermediate layer (Fig. 1C) when there are three layers. In this latter embodiment, where there is a possibility that polyethylene is the intermediate layer, Higuchi et al. teaches that the outermost layers

(1) are both polypropylene. Accordingly, since Higuchi et al. does not teach or suggest, explicitly or inherently a 3-layer microporous film that contains polyethylene as an intermediate layer and at least one surface layer having the recited blend having no more than 95% polypropylene, the claims as amended are not anticipated. Claims 20 and 21 are even further distinguished from the teachings of Higuchi et al. by requiring that both surface layers of the film require a blend that contains between more than 50% by weight and 95% by weight or less polypropylene.

Claims 4, 6-8, 12 and 14-16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Higuchi et al. The Office has acknowledged that Higuchi et al. does not disclose the features recited in these claims, but argues that because the microporous polyolefin film of Higuchi et al. has a composition similar to and is produced in a similar fashion, the recited characteristics would be provided. The Office appears to be suggesting that the recited characteristics would be inherent in the product of Higuchi et al. or that a person skilled in the art may be able to achieve the recited characteristics with an appropriate selection of materials and parameters arguably within the broad scope of the teachings in Higuchi et al. Applicants respectfully disagree that the recited features are inherent or could be achieved by following the guidance present in Higuchi et al.

First, applicants incorporate the arguments presented above with respect to how independent claims 1 and 9, and also claims dependent thereon, are distinguished from Higuchi et al. On this basis alone, this rejection should be withdrawn. Secondly, to rely on the principle of inherency, the recited results must always occur, and not simply be just possibilities or even probabilities. MPEP 2112(iv). It is clear from the teachings of

Higuchi et al. that only a small portion of those teachings relative to the content of the outermost layer could possibly overlap with the present claim, in addition to other parameters such as thicknesses of the layers, specific materials selected, and processing parameters (e.g., extrusion, heating and stretching), that would affect the characteristics of the final product. There is no teaching in Higuchi et al. as to how all these selections should be made to achieve the features recited in these claims. Accordingly, this rejection should be withdrawn.

Claim 17 stands rejected as being anticipated or being obvious over Higuchi et al. The Office argues that even though Higuchi et al. does not disclose that the film has a degree of blackening of 5% or less, it would either inherently possess that characteristic or would be provided by following the teachings of Higuchi et al. because a similar composition is used in a similar fashion. This rejection is respectfully traversed.

The comparative data in the specification at Table 3, page 39 of the specification shows the importance of observing parameters within the scope of the present invention in order to achieve a microporous film having a degree of blackening of 5% or less. Since Higuchi et al. does not teach or suggest a microporous polyolefin film according to the present invention, this rejection should be withdrawn.

Prompt and favorable reconsideration is requested.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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